IN THE HIGH COURT OF JUDICATURE
ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE MR JUSTICE NOOTY RAMAMOHANA RAO

WRIT PETITION NO :30822 of 1997

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Dated: 22nd June 2007.

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Between:

Visakha Port Karmika Sangh, Sri Sambamurthy Nagar, D.No.35-37-192, Visakhapatnam – 530 008, represented by its General Secretary, Sri Vanka Rajulu.

..... PETITIONER

AND

Visakhapatnam Port Trust, Visakhapatnam, rep. by its Chairman.

.....RESPONDENT

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

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W.P.NO.30822 OF 1997

ORAL ORDER:

This writ petition has been instituted by a registered Trade Union of Visakhapatnam Port Trust seeking *mandamus* to declare the action of the Visakhapatnam Port Trust (henceforth referred to as 'the VPT') in filling up the promotion posts only from Scheduled Caste and Scheduled Tribe categories and thus depriving the promotional opportunities to the un-reserved candidates as also preparing a panel for five long years at one go, as bad. Certain consequential directions are also solicited.

The essential grievance of the writ petitioner-Trade Union appears to be that the VPT has not been adhering to the principles of reservation in favour of the Scheduled Castes, Scheduled Tribes and other backward classes, strictly in accordance with the guidelines issued by the Ministry of Personnel, P.G. & Pensions (Department of Personnel & Training), Government of India and it has been departing from these guidelines at its sweet will and was thus causing injustice, particularly, in the matter of consideration of cases of the un-reserved category candidates.

Visakhapatnam is one of the major Ports, constituted in accordance with the provisions contained in the Major Port Trusts Act, 1963. Exercising the power

available with it, it had framed the Visakhapatnam Port Employees (Recruitment, Seniority and promotion) Regulations, 1964 (henceforth referred to as 'the Regulations'). In terms of these regulations, each of the heads of the departments of the VPT has been classified and conferred with the power of making appointments/promotions insofar as Class-IV and Class-III posts in the respective departments are concerned. As per the directions and the policies pursued by the VPT in the matter of direct recruitment of Class-IV and Class-III posts, the principles of reservations are strictly followed and adhered to. Insofar as promotions are concerned, the policy pursued by the VPT was that it applied the principles of reservation in the matter of promotion up to the last rung of the Class-I posts. Therefore, it was incumbent upon the VPT to maintain separate roasters for direct recruitment as well as the promotions. Roasters have been prescribed for the purpose of regulating and effectively implementing the principles of reservation and the equitable distribution of the opportunities amongst all competing groups. It is well to remember that for want of availability of suitable and eligible candidates, in particular, belonging to Scheduled Castes or Scheduled Tribes, against the specified roaster points meant for such groups, the practice of carrying them forward for, at least, three recruitment years, is also followed. The concept of carry-forward is that against the slot reserved in the roaster, where suitable candidates are not

available, instead of filling it up with the specified group for which the slot is so reserved, such as Scheduled Castes or Scheduled Tribes, the vacancy may be filled in with an un-reserved category candidate, for the time being. At a later stage, as and when the specified category candidate becomes available, one of the un-reserved vacancies will be diverted for being filled in with candidates belonging to the reserved segment. Sometimes the slots can also be interchanged between SCs and STs. As a result of this exercise, the interests of the reserved category candidates are properly balanced and they will not be put to loss, in any manner, so that the opportunities, which are distributed equitably, are not lost out for any reason. These principles are time tested and time honoured.

The grievance nurtured by the writ petitioner can be demonstrated to be merit-less with reference to the very illustration taken up by the writ petitioner in the affidavit filed in support of the writ petition. The post of Tally Clerks are included and classified as Class-III posts. The next level of post for which a Tally-Clerk gets promoted is Upgraded Tally Clerk. From there, he can get promoted as Assistant Quay Foreman and from there, to Quay Foreman. Again he can also seek promotion to the next higher post of Dock Inspector. The writ petitioner has taken up the illustration of an un-reserved category candidate by name Sri T.Someswara Rao, who was

appointed as a Tally Clerk on 01-07-1967, where as four other candidates, namely; Sri N.P.Satyanarayana, Sri M.Sarveswara Rao, Sri B.Satya Rao and Sri R.V.Ramana, have all joined the service of the VPT later than Sri T.Someswara Rao, but however, they have all been promoted to the next higher category post including up to the Quay Foreman/Dock Inspector and further as Assistant Manager as well, but the said un-reserved category candidate Sri T.Someswara Rao has not been awarded so many promotions. This, according to the petitioner is violative of the Constitutional mandate of equality. The grievance nurtured by the writ petitioner-Trade Union is absolutely illusory. The writ petitioner is not appreciating the fact that members belonging to Scheduled Caste and Scheduled Tribe can stake their claim for promotion to the next higher post on out of turn basis when a slot in the running roaster meant for Scheduled Castes or Scheduled Tribes become available, the cases of candidates belonging to that particular category alone will be considered and the candidature of an un-reserved category candidate, though he is senior will not be considered. Amongst Scheduled Castes and Scheduled Tribe candidates, their *inter se* seniority will be followed in the matter of such consideration. Therefore, the candidates, namely; Sri N.P.Satyanarayana, Sri M.Sarveswara Rao, Sri B.Satya Rao and Sri R.V.Ramana, are all, candidates either belonging to Scheduled Caste or Scheduled Tribe and

they have been promoted to the next higher category and thus earned their promotion by virtue of operation of the cyclic rotation of vacancies incorporated in the roaster. No grievance, therefore, be entertained on this count. There is no bar against exclusive consideration of the candidature of such reserved category candidates for further promotion, against the reserved slots and particularly, when the principles of reservation are followed and adapted by the VPT in the matter of promotions up to the last rung of Class-I category posts, phenomenon of accelerated promotion to the Scheduled Caste and Scheduled Tribe candidates is assured. No grievance, therefore, can be made in this regard.

However, in the matter of fixation of *inter se* seniority, the principle has been settled in the following manner by the Supreme Court in the case of **UNION OF INDIA v. VIRPAL SINGH CHAUHAN**[1] by pointing out that if a senior un-reserved category candidate and a junior reserved category candidate once again meet in the same promoted cadre, then, the senior un-reserved category candidate is entitled to be placed above the junior reserved category candidate irrespective of the date of the accelerated promotion of such reserved category candidate being earlier in point of time to the date of promotion of the un-reserved senior candidate. It will be appropriate at this stage to look at how this principle has been settled by the Supreme Court.

> " In short, it is open to the State, if it is so advised, to say that while the rule of reservation shall be applied and the roster followed in the matter of promotions to or within a particular service, class or category, the candidate promoted earlier by virtue of rule of reservation/roster shall not be entitled to seniority over his senior in the feeder category and that as and when a general candidate who was senior to him in the feeder category is promoted, such general candidate will regain his seniority over the reserved candidate notwithstanding that he is promoted subsequent to the reserved candidate. There is no unconstitutionality involved in this."

Therefore, the writ petitioner-Union ought to have demonstrated with reference to the progression of careers by the un-reserved category candidate Sri T.Someswara Rao, and the rest of the reserved category candidates, whose names have been mentioned supra and as to how the VPT has denied the restoration of seniority in favour of the said T.Someswara Rao in any particular and specified category/post. The pleadings in this behalf are lacking both in content and clarity. In the absence thereof, no such grievance, aired in absolutely general terms, cannot be entertained and they deserve to be rejected.

There is one other grievance ventilated by the writ petitioner that the VPT has been making wholesome departures from the cyclic rotation of vacancies

incorporated in the roaster and has been resorting to make promotions only in favour of Scheduled Caste and Scheduled Tribe candidates without considering the candidature of the un-reserved category candidates.

Even on this account, there is no clarity on the part of the writ petitioner, but however, to satisfy myself that the VPT is strictly adhering to the rotation of vacancies in a cyclic order system; called the roaster system, I summoned those records. A couple of registers have been produced by Ms. Uma Devi, the learned Standing Counsel for VPT to demonstrate that the VPT had followed in the past and has been following the roasters ever since, faithfully. It is true that prior to 01-07-1997, the VPT was following 40-point roaster system, but subsequently, the Government of India had rationalized the scheme of giving effect to the principles of reservation in favour of Scheduled Castes, Scheduled Tribe and other backward classes, etc. by redesigning an altogether different roaster system, pursuant to the judgment rendered by a Constitution Bench of the Supreme Court in R.K.SABHARWAL v. STATE OF PUNJAB [2], called 200-point "Post-Based roaster system" suggested by the Government of India with effect from 01-07-1997. Therefore, I could not find any such departure as alleged by the writ petitioner. Further, it will be well to remember that even while filling up the carry-forward vacancies by Scheduled Castes and Scheduled

Tribes, care has got to be taken that at least a reasonable proportion of vacancies was also made available to be filled in by open category candidates in each recruitment year. This balancing act has got to be performed by taking into consideration and account the total number of vacancies that become available and are liable to be filled in a particular recruitment year. Generally, making available at least 50% of the vacancies that become available in any recruitment year for open competition is a reasonable way of balancing the interests of various competing candidates. Since, there was no specific plea or material with reference to which, this issue could be examined, no specific directions could be issued to the respondent. In fact, the respondents in its counter-affidavit at Paragraph No.12 have categorically pointed out that no panel for five years was prepared at one go and on the other hand, they are strictly following the principle of preparation of year-wise panels.

I have no reason to disbelieve the solemn statement made in Paragraph No.12 of the counter-affidavit. I, therefore, do not find any merit in the writ petition and the same is liable to be dismissed.

The writ petition is, therefore, dismissed. However, I do not consider it appropriate to impose costs against the writ petitioner, hence, no costs.

Nooty Ramamohana Rao, J

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22nd June 2007.

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[1] AIR 1996 SC 448

[2] AIR 1995 SC 1371